Information Disclosure Statements

With respect to the Information Disclosure Statements filed on April 13 and July 12 of 2000, the Examiner states that they have been placed in the application file but not considered, because copies of the associated references were not filed as required by 37 C.F.R. § 1.98(a)(2).

Applicants direct the Examiner's attention to the Information Disclosure Statement and corresponding PTO-1449 form filed on March 29, 2002. This PTO-1449 lists references including and in addition to those previously cited by Applicants during prosecution of the present case, and is intended to replace all prior-filed PTO-1449s.

Applicants respectfully request that the Examiner consider these references. Since all listed references were cited by or to the Examiner in earlier applications relied on for an earlier effective filing date under 35 U.S.C. § 120, no copies are required to be furnished by Applicants pursuant to 37 C.F.R. 1.98(d).

The § 112 Rejection Has Been Overcome

Applicants have amended claims 3, 7, 11 and 15 to correct an inadvertent drafting error of minor typographic character. Accordingly, Applicants respectfully request withdrawal of the § 112 rejection.

The Double Patenting Rejection Should Be Withdrawn

The Examiner rejected claims 1, 4-5, 8-9, 12-13 and 16 under 35 U.S.C. § 101 as claming the same invention as that of claims 5, 2, 13, 2, 10, 2, 10 and 2, respectively, of prior U.S. Patent No. 6,204,862 B1 ("the '862 patent"). Applicants respectfully submit that this rejection is improper and request that it be withdrawn.

A statutory double patenting rejection under 35 U.S.C. § 101 requires identical subject matter to be claimed twice. (*See* M.P.E.P. § 804.II.A.) On the other hand, where there are variations in the scope of the claim language, the question arises as to whether the present claims are obvious in view of the patented claims. If the Examiner believes that is the case, then the

more proper rejection should be a non-statutory obviousness-type double patenting rejection, which can be overcome by a terminal disclaimer.

All of the present claims are different in scope from any of the '862 patent claims for at least the reason that the present independent claims do not recite "generating a sequence of symbolic descriptions", as recited by the independent claims of the '862 patent.

Accordingly, in view of the differences between the pending claims and the claims of the '862 patent, Applicants respectfully submit that claims 1, 4-5, 8-9, 12-13 and 16 are not identical in scope to the previously patented claims, and that the rejection under 35 U.S.C. §101 should be withdrawn.

In the event that, upon reconsideration, the Examiner may contend that a non-statutory obviousness-type double patenting rejection is appropriate, Applicants would be willing to submit a terminal disclaimer disclaiming any term beyond the expiration date of the '862 patent in an effort to expedite prosecution.

The Claims Patentably Define the Invention Over McCarthy and Hughes

The Examiner rejected claims 1-16 under 35 U.S.C. § 103(a) as being unpatentable over McCarthy (U.S. Patent No. 4,894,774) in view of Hughes (U.S. Patent No. 4,918,603). Applicants respectfully traverse these rejections for at least the following reasons.

Independent claim 9 recites, *inter alia*, "transmitting information from the updated representation of at least one of the plurality of live events." Independent claims 1, 5 and 13 recite similar limitations. None of the references cited by the Examiner, taken alone or in combination, teach or suggest such a limitation.

In rejecting the independent claims, the Examiner indicates that the method for transmitting a game simulation provided by McCarthy, coupled with Hughes' disclosure of the simulation of sports on a computer, would lead a skilled artisan to conclude that the claimed

invention is obvious "because Hughes teaches above the simulation of an easy to use football game based on actual performances." Office action, pages 4-5. Applicant respectfully traverses the Examiner's characterization of Hughes, and the Examiner's motivation to combine McCarthy with Hughes.

Foremost, Applicants note that the present independent claims do not recite transmitting a *simulation*, as suggested by the Examiner; rather, the present invention is directed to transmitting information that may be useful in a computer simulation.

Even in the absence of this distinction, Hughes does not teach "the simulation of sports, such as a football game, on a computer", as characterized by the Examiner on page 4 of the Office action. To the contrary, Hughes is directed to a computer program that eases the administrative burden of a "Fantasy Football" type *league*; the program performs the tasks for setting up individual franchises, organizing a draft, charting weekly starting line-ups, executing player trades, tabulating a player's and team's scores to determine weekly and seasonal champions, and printing out the score results. Hughes, col. 3, lines 66 – col. 4, line 4. The scores are based on statistical data from actual players and games, and are updated on a weekly basis in the form of diskettes. Hughes, col. 3, lines 3-5.

Thus, Hughes does not simulate a sporting event, a critical component of the Examiner's § 103 rejection; rather Hughes merely collects statistical data from several sporting events and rearranges it in a fashion unrelated to the original sporting events.

Additionally, the Examiner does not provide the motivation to combine McCarthy with Hughes, which is required for the § 103 rejection. In making the argument to combine, the Examiner states that "McCarthy fails to explicitly disclose *simulation of a live event*." Office action, page 4. The Examiner thus cites to Hughes for disclosing simulation of a live event (which, as discussed above, is not accurate), and states that the claimed invention is obvious "because Hughes teaches above the simulation of an easy to use football game based on actual performances." Office action, pages 4-5. Not only does Hughes not teach the simulation of a

live event or a football game generally, the Examiner does not provide the required motivation that explains how a video game processor described by McCarthy can be combined with a "Fantasy Football" type league program described by Hughes to teach the claimed invention.

Accordingly, Applicants respectfully submit that the Examiner does not establish a *prima facie* case of obviousness because the prior art, however modified or combined, fails to teach or suggest all of the claim limitations. Furthermore, as each of the rejected dependent claims depend from and further limit their respective independent claims, Applicants respectfully submit that for at least the same reasons as above all of the pending dependent claims are patentable under 35 U.S.C. § 103.

CONCLUSION

It is respectfully submitted that, in view of the foregoing amendments and remarks, the application is in clear condition for allowance. Issuance of a Notice of Allowance is earnestly solicited.

Attached hereto is a marked-up version of the changes made to the claims by this Response to Office action. The attached page is captioned "**VERSION WITH MARKINGS TO SHOW CHANGES MADE.**"

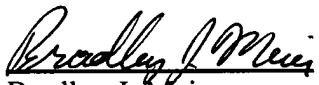
The Office is authorized to charge the two-month small entity extension of time fee of $200.00 to Deposit Account No. 11-0600. Although not believed necessary, the Office is hereby authorized to charge any additional fees required under 37 C.F.R. § 1.16 or § 1.17 or credit any overpayments to Deposit Account No. 11-0600.

The Examiner is invited to contact the undersigned at 202-220-4200 to discuss any matter regarding this application.

Respectfully submitted,

KENYON & KENYON

Dated: September 10, 2002

By: 
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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

The claims have been amended as follows:

3. **(Once Amended)** The method of claim 1 wherein:

the representing step comprises representing said at least one sub-event by a start time and a stop time associated with said at least one action type associated with said at least one sub-event; and

the updating step comprises updating the database file using said start and [end] stop time of said at least one action type of said at least one sub-event.

7. **(Once Amended)** The method of claim 5 wherein:

the representing step comprises representing said at least one sub-event by a start time and a stop time associated with said at least one of the action types associated with said at least one sub-event; and

the updating step comprises updating the database file using said start and [end] stop time of said at least one action type of said at least one sub-event.

11. **(Once Amended)** The method of claim 9 wherein:

the representing step for at least one of the plurality of live events comprises representing said at least one sub-event by a start time and a stop time associated with said at least one action type associated with said at least one sub-event; and

the updating step for said at least one of the plurality of live events comprises updating the database file using said start and [end] stop time of said at least one action type of said at least one sub-event.

15. **(Once Amended)** The method of claim 13 wherein:

the representing step for at least one of the plurality of live events comprises representing the at least one sub-event by a start time and a stop time associated with said at least one action type associated with said at least one sub-event; and

the updating step for said at least one plurality of live events comprises updating the database file using the start and [end] stop time of said at least one action type of said at least one sub-event.